



BRB No. 21-0032

JOSE L. VILLACORTA CHAVARRIA)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CONSTELLIS GROUP/TRIPLE CANOPY,)	
INCORPORATED)	
)	
and)	DATE ISSUED: 11/23/2021
)	
SOC-SMG, INCORPORATED)	
)	
and)	
)	
CONTINENTAL INSURANCE COMPANY)	
)	
Employers/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and the Order Denying Motion for Reconsideration of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

Lara D. Merrigan (Merrigan Legal), Sausalito, California, and Ana Catalina Alvarez (Barnett, Lerner, Karsen & Frankel, PA), Fort Lauderdale, Florida, for Claimant.

Michael W. Thomas and Edwin B. Barnes (Thomas Quinn, LLP), San Francisco and San Diego, California, for Constellis Group/Triple Canopy, Incorporated and Continental Insurance Company.

Rebecca F. Stillman (Brown Sims), Houston, Texas, for SOC-SMG and

Continental Insurance Company.

Before: BUZZARD, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Denying Benefits and Order Denying Motion for Reconsideration (2018-LDA-01048 and 2018-LDA-01063) rendered on claims filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (Act).¹ We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, a citizen of Peru, worked in Iraq as an armed security guard, first for Triple Canopy, Incorporated (TCI), from October 19, 2005 until July 20, 2011, and then for SOC-SMG, Incorporated (SOC), from July 21, 2011 until September 30, 2011, during which time he allegedly experienced numerous hostile attacks and other war hazards.² He thereafter returned to Peru, where he works as a cab driver. On July 19, 2017, Claimant treated with a psychologist, Carmen Ciuffardi Montoya, B.A., Psychology, for problems with sleeping, aggression, and hypervigilance. JX 16. Ms. Montoya stated Claimant's symptoms matched the criteria for Post-Traumatic Stress Disorder (PTSD), which was caused by his exposure to repetitive and strong stress situations. *Id.* She stated Claimant needs psychiatric medication and psychotherapy and "referred [him] to psychiatry for the corresponding assessment." *Id.*

Dr. Enrique Galli, a psychiatrist who evaluated Claimant on multiple occasions from August 18, 2017 through May 31, 2019, diagnosed PTSD caused by work exposures from

¹ The Benefits Review Board's processing of this case was substantially delayed due to the COVID-19 pandemic, which impacted the Board's ability to obtain records from the Office of Administrative Law Judges and the Office of Workers' Compensation Programs.

² Claimant stated these experiences included: a rocket attack while covering a post at the Al Rashid Hotel in 2006 which killed two other security personnel; a mortar attack in 2007, which killed an Army service member; a rocket attack inside Camp Candor (the rocket landed inside the Camp but did not detonate); and steadily increasing rocket attacks, between three to four times per week, between July and October 2011. HT at 9-12.

his employment in Iraq for which he stated Claimant needs ongoing psychiatric and psychological treatment. JX 18. He further opined Claimant would be able to work in some capacity while receiving treatment, but would never be capable of returning to work in a war zone. *Id.* Meanwhile, on February 19, 2019, Claimant, at SOC's behest, was examined by a licensed clinical psychologist and clinical neuropsychologist, Gloria Morote, Ph.D., who opined Claimant did not suffer from a current psychological condition or mental illness, or any psychological condition caused or aggravated by his work with SOC. JX 19. Dr. Morote also opined there is no disability caused by a work-related psychological injury such that Claimant is capable of returning to work overseas as an armed guard without any restrictions. JX 19.

Claimant filed claims against TCI and SOC (collectively Employers) for an alleged work-related psychiatric condition, JXs 2, 7, which each Employer controverted as untimely filed under Sections 12 and 13 of the Act, 33 U.S.C. §§912, 13, and alternatively as not compensable because there was no evidence establishing a causal link between any psychological condition and Claimant's overseas work. JXs 3, 8. Both claims were referred to the Office of Administrative Law Judges. The cases were consolidated; the parties agreed to an adjudication by submission of the evidence in lieu of a live hearing and submitted joint exhibits and trial briefs.

In her decision, the ALJ found Claimant provided Employers timely notice of his injury and filed timely claims for benefits. 33 U.S.C. §§912, 913; Decision and Order at 6-7. She found Claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), relating his psychological condition to his overseas work with TCI and SOC, but found Employers rebutted the presumption. She then determined Claimant did not prove by a preponderance of the record as a whole that he suffered a psychological injury as a result of his work in Iraq with either TCI or SOC. Accordingly, she denied Claimant's claims. The ALJ summarily denied Claimant's motion for reconsideration.

On appeal, Claimant challenges the ALJ's finding that he did not sustain a work-related psychological condition and the consequent denial of benefits. TCI and SOC each respond, urging affirmance of the ALJ's denial of benefits.³ Claimant has filed a reply brief.

³ The Director, Office of Workers' Compensation Programs, filed a letter brief stating he would not participate in this appeal unless specifically requested to do so by the Board.

Administrative Procedure Act (APA)

Claimant contends the ALJ's decision does not comport with the requirements of the APA because, in addressing causation on the record as a whole, she did not weigh or discuss Claimant's credibility and she failed to address any of "the inconsistencies and omissions" in Dr. Morote's report or the results of the testing documented in Dr. Morote's report.⁴ Claimant further contends the ALJ's order on reconsideration is similarly insufficient to satisfy the requirements of the APA because it did not address any of the issues he raised in his motion for reconsideration.

The APA requires an ALJ to adequately detail the rationale behind her decision, analyze and discuss the relevant evidence of record, and explicitly set forth the reasons for her acceptance or rejection of such evidence. 5 U.S.C. §557(c)(3)(A); *see Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988). The ALJ's summary of the evidence in the instant case comports with the APA in that she set out all of the relevant evidence of record, Decision and Order at 3-5, and discussed the weight afforded this evidence in greater detail when considering the totality of the evidence on the issue of causation. *Id.* 9-10.

Contrary to Claimant's contentions, the ALJ adequately addressed the underlying rationale of Dr. Morote's opinion.⁵ She stated Dr. Morote acknowledged Claimant "complained of problems with his temper, intolerance, and aggression" and that he was having "difficulty sleeping and frequent nightmares." *Id.* at 5. She also stated Dr. Morote documented Claimant's recent history of alcohol consumption and that he "did report thoughts of suicide, placing a gun in his mouth, but not going through with it." *Id.* The ALJ also noted, however, Dr. Morote's assessment of Claimant's "demeanor as alert, fully oriented and neither elevated or depressed," his "thought processes were logical and goal

⁴ Claimant maintains Dr. Morote "ignored his history of suicidal ideations and persistent issues with his temper, aggressivity, difficulty falling asleep and frequent nightmares," and did not adequately explain her diagnosis of "alcohol use disorder" in terms of the accepted concept that individuals with a psychological injury are at increased risk of self-medicating with alcohol as a means of coping with that condition. Cl. Br. at 14. It is worth noting that Dr. Morote never actually diagnosed "alcohol use disorder."

⁵ The ALJ's decision also reflects she accurately summarized Claimant's testimony, as well as the statements he provided to the three medical providers, Decision and Order at 3-5, and considered Claimant's statements in the context of weighing the medical reports in terms of causation, *id.* at 9-10.

oriented,” and he reported that by 2015 “his drinking diminished to about once per week.” *Id.* Additionally, the ALJ acknowledged “Dr. Morote conducted three objective tests” and provided observations of the corresponding results. *Id.* Moreover, as further discussed below, the ALJ explained her rationale for according greater weight to Dr. Morote’s opinion and for concluding that based on the evidence as a whole Claimant “has not established that he suffered a psychological injury as a result of his work in Iraq with either TCI or SOC.” *Id.* at 10. We therefore reject Claimant’s contention that the ALJ’s decision is not in accordance with the requirements of the APA.⁶ 5 U.S.C. §557(c)(3)(A); *see Santoro*, 30 BRBS at 171.

Causation: Weighing of the Evidence as a Whole

Claimant contends the ALJ erred in giving less weight to the opinions of his treating medical providers. He contends the ALJ did not recognize that Ms. Montoya is, in Peru, a psychologist who signs her reports as “Dr.” and teaches classes at a university. He also asserts the ALJ erroneously rejected Dr. Galli’s opinion merely because the record did not contain a curriculum vitae (CV) to establish his professional credentials. He further contends the ALJ compounded that error by not addressing, on reconsideration, his submission of Dr. Galli’s CV, which confirms his professional status as a licensed medical provider for the past 13 years and shows his affiliation with the Galli Mental Health Center where he focuses on psychiatry and mental health issues. Moreover, Claimant contends Dr. Morote’s causation opinion is flawed because she did not discuss whether Claimant’s alcohol abuse disorder was caused by his work in Iraq, she did not explain how the testing she performed informed her opinion, she made no statement about whether a return to a war zone might trigger any underlying conditions making them symptomatic, and she couched her causation opinion only in terms of finding no “current” psychological condition, thereby leaving the possibility that Claimant, in fact, had a work-related psychological condition at some point prior to the date of Dr. Morote’s report. For the following reasons, we reject Claimant’s arguments.

Once the Section 20(a) presumption is invoked and rebutted, as here, it no longer controls and the issue of causation must be resolved on the evidence of record as a whole,

⁶ The ALJ’s Order Denying Reconsideration also did not violate the APA. 5 U.S.C. §557(c)(3)(A); *see Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996). As Claimant’s contentions on reconsideration involved credibility issues previously addressed and rejected in the ALJ’s decision, and Dr. Galli’s curriculum vitae did not constitute new, previously unavailable evidence, *see n. 9 infra*, it was unnecessary for her to extensively address any of this on reconsideration.

with the claimant bearing the burden of persuasion by a preponderance of the evidence.⁷ *Rainey v. Director, OWCP*, 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008); *American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001); see also *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). In addressing the evidence as a whole, the ALJ reviewed Claimant's submission of "reports from two of his treating medical professionals," as well as Employer's submission of Dr. Morote's contrary report. Decision and Order at 10. She found Ms. Montoya "provided a one page summary of the Claimant's condition noting that his symptoms matched the criteria for PTSD," and Dr. Galli similarly provided "a summary of the Claimant's condition based on the DSM-V criteria, and diagnosed him with PTSD." *Id.* The ALJ, however, found their opinions less persuasive than Dr. Morote's because they were largely based "on the Claimant's self-reported symptoms and subjective complaints," as there was no evidence either one conducted "objective psychological testing" to support their conclusions. *Id.* The ALJ then accorded "lesser weight" to Ms. Montoya's opinion as her CV did not indicate whether she "received a medical or doctorate degree in psychology, that she is a licensed psychologist or if she is qualified to provide a diagnosis of PTSD." Finally, she noted the record does not contain any CV for Dr. Galli, such that his credentials as having "a medical or any other doctorate degree or being a licensed psychologist/psychiatrist" cannot be confirmed – but she nevertheless accorded "some weight" to his opinion.

In contrast, the ALJ found Dr. Morote highly credentialed based on her receipt of a Ph.D. in Clinical Psychology and completion of a post-doctoral fellowship in clinical neuropsychology. Decision and Order at 10. She also found her opinion that Claimant did not suffer a psychological condition caused by his work in Iraq well supported as it "was based on a 3.5 hour clinical interview, a review of the medical reports provided by the Claimant and three psychological assessments," which included objective testing. Decision and Order at 10. Finding Dr. Morote's credentials and opinion "more persuasive," the ALJ accorded her opinion "greater weight." *Id.* Consequently, she

⁷ Contrary to Claimant's contention, the ALJ was not confined, in addressing causation based on the record as a whole, to rely on her finding invoking the Section 20(a) presumption that Claimant sustained a psychological "harm." See generally *American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001) (If the presumption is rebutted, it drops from the case and the fact-finder must evaluate all of the relevant evidence and reach a decision based on the record as a whole, with the claimant bearing the burden of persuasion.). She instead properly reexamined the entirety of the evidence to determine whether Claimant established a work-related psychological injury based on the record as a whole – without the benefit of the presumption. *Id.* We therefore reject Claimant's contention.

concluded, after weighing the evidence as a whole, Claimant has not established he suffered a psychological injury as a result of his work in Iraq for either TCI or SOC. *Id.*

It is well established the ALJ is entitled to weigh the evidence and draw her own inferences and conclusions from it. *See John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *see also Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). It is impermissible for the Board to reweigh the evidence or to substitute its own views for those of the ALJ. *Sealand Terminals v. Gasparic*, 7 F.3d 321, 28 BRBS 7(CRT) (2d Cir. 1993); *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 14 BRBS 538 (2d Cir. 1982).

Recognizing the ALJ's broad discretion in weighing the evidence and making credibility determinations, we affirm her finding that Claimant did not establish he suffered a psychological injury as a result of his work in Iraq with either TCI or SOC. *Gasparic*, 7 F.3d 321, 28 BRBS 7(CRT); *Volpe*, 671 F.2d 697, 14 BRBS 538. Contrary to Claimant's contentions, the ALJ's discussion reflects her awareness that treating physicians' opinions may, under certain circumstances, be accorded special weight but are not accorded automatic deference. Substantial evidence supports her decision to give "some" and "lesser" weight respectively to Claimant's treating medical providers, Dr. Galli and Ms. Montoya in part because they did not perform any "objective psychological testing" to support their diagnoses of PTSD. Decision and Order at 10. As noted above, only Dr. Morote's report contains information on objective testing/assessments conducted on Claimant. JX 19. Therefore, any possible error by the ALJ in according diminished weight to the opinions of Dr. Galli and Ms. Montoya due to the lack of more specific evidence relating to their credentials is harmless, as the ALJ provided a valid reason for according the greatest weight to Dr. Morote's opinion: it is more thorough and better documented.⁸

⁸ The ALJ correctly stated, "[n]o curriculum vitae was included in the exhibits confirming Dr. Galli's credentials," Decision and Order at 4 n.3, thereby precluding her from "confirming [Dr. Galli's] credentials as having a medical or any other doctorate degree, or being a licensed psychologist/psychiatrist." *Id.* at 10. We affirm the ALJ's finding this evidence was not a part of the record before her and reject Claimant's suggestion that he is entitled to have this previously available evidence added to the record through the filing of a motion for reconsideration. *See generally Rafter v. Liddle*, 288 Fed. App'x 768, 769 (2d Cir. 2008) (Motions for reconsideration "are not vehicles for taking a second bite at the apple, . . . and [the court should] not consider facts not in the record to be facts the court overlooked."); *Smith v. Ingalls Shipbuilding Div., Litton Systems, Inc.*, 22 BRBS 46 (1989) (a party seeking to have evidence admitted must have exercised diligence in developing its claim *prior to the hearing*).

Moreover, we reject Claimant's contention that Dr. Morote's opinion is inherently flawed. Initially, we note the ALJ's decision reflects she adequately reviewed Dr. Morote's report in terms of the alleged flaws raised by Claimant. Dr. Morote's report contains a section entitled "Test Data," wherein she reviewed Claimant's scores in three assessments. JX 19. She stated Claimant's cognitive assessment score was well within the normal range, his trauma symptom inventory exhibited a high number of atypical responses that "tap anger, dissociation, intrusive experiences, defensive avoidance, suicidality, [and] tension reduction behavior" within the clinical range, but his Minnesota Multiphasic Personality Inventory scales "are indicative of exceedingly high over endorsement of symptoms to the extent as to invalidate the clinical profile." *Id.* Her report also reflects consideration of Claimant's alcohol intake history, *id.*, and contains her statement that, although Claimant's reported "2 to 3 year pattern of alcohol use" would meet criteria for an Alcohol Use Disorder, "at this point" Claimant's alcohol use has "substantially diminished." *Id.* Dr. Morote further stated her opinion was given "with a reasonable degree of psychological certainty," is "[b]ased on the integration of the currently available data which includes review of available records, a diagnostic clinical interview, mental status review, [and] standardized psychological tests," and encompasses a consideration of all the information put forth in her report. *Id.*

While Claimant is correct that Dr. Morote refers to him as having no "current" mental illness or psychological condition, her additional statements that Claimant "does not have a psychological condition that was caused or aggravated by his employment" and "[t]here is no psychological injury sustained/exacerbated during [Claimant's] work" for Employers are sufficient to establish the lack of a causal nexus between any alleged psychological condition and Claimant's work in Iraq.⁹ Consequently, we affirm the ALJ's conclusion that Claimant has not established he sustained a work-related psychological condition by a preponderance of the evidence, as it is supported by substantial evidence. *Rainey*, 517 F.3d 632, 42 BRBS 11(CRT) (Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."); *Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT); *see generally Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962) (that other inferences could have been drawn from the record does not establish error in the ALJ's conclusion).

⁹ Dr. Morote's February 19, 2019 examination was contemporaneous with three of the four examinations Dr. Galli conducted on November 20, 2018, January 8, 2019, and March 11, 2019, which were to treat many of the same complaints Claimant identified during his first visit on August 18, 2017.

Accordingly, we affirm the ALJ's Decision and Order Denying Benefits and Order Denying Motion for Reconsideration.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge